CERTIFICATE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902. 1903.

No. 169. 142.

EDWARD E. BESSETTE

vs.

W. B. CONKEY COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED OCTOBER 15, 1902.

(18,690.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 26, 1903.

1 In the United States Circuit Court of Appeals for the Seventh Circuit, May Session, A. D. 1902.

EDWARD E. BESSETTE, Appellant,
v.
W. B. CONKEY COMPANY. } No. 859.

In this case, duly argued and submitted to this court, there arise questions of law concerning which the court desires the instruction and advice of the Supreme Court of the United States.

On August 24, 1901, the W. B. Conkey Company, a corporation of the State of Illinois, filed its bill of complaint against James K. Russell and many others, citizens of the State of Indiana (the appellant, Edward E. Bessette, not being a party to the cause), asking for a restraining order or orders, provisional and perpetual, against the defendants, their confederates, agents and servants, restraining them from the commission of sundry lawless acts, principally in interfering with the operation of the complainant's printing and publishing house, located at Hammond, in the State of Indiana. The bill charges that the defendants and their confederates are engaged in a conspiracy to destroy the complainant's factory and wreck its business, and to this end large bodies of men surround the complainant's factory, obstruct the highways and streets leading thereto, assault employés as they pass in and out of the factory coming to their work and returning to their homes, watch the street cars and other conveyances running to and from
2 the factory, lie in wait and threaten, terrorize, and intimidate, persons thereon who are seeking employment in complainant's factory; that they patrol the streets, places, and grounds, adjoining the factory and large groups continuously use indecent language and vile epithets to workmen and workwomen employed therein and to all seeking employment therein, with the design and intent to prevent the complainant from carrying on its business and from retaining its workmen and workwomen in its factory and to prevent them from securing others to fill places vacated by the defendants; that they threaten those employed in the complainant's factory with bodily harm if they remain in the service of the complainant and by the use of vile and abusive language and vile and insulting epithets seek to force the employés of complainant to leave and quit its service.

Upon presentation of the bill and proof by affidavits, a temporary restraining order was issued, and the defendant-, their confederates, servants and agents, and all persons aiding or abetting the defendants, or any of them, and all persons then or thereafter aiding, abetting, confederating with or acting in concert with them, or any of them, their servants or agents, were restrained and enjoined from in any manner interfering with, hindering, obstructing, or stopping, any of the business of the complainant, its agents, servants, or employés, in the operation of the factory and business at Hammond, and from entering upon the ground, factory, or premises, of the

complainant for the purpose of interfering with, hindering, obstructing, or stopping, its business, or from compelling, or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force, or violence, any of the employés of complainant to refuse or fail to perform their duty as such employés
3 and also from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, or violence, any of such employés to leave complainant's service. The order likewise forbids the defendants, either singly or in combination with others, to collect in or about the approaches to the factory and buildings of the complainant for the purpose of picketing and patrolling the grounds, streets, avenues, or gates and approaches, to the property of complainant for the purpose of intimidating, threatening, or coercing, any of the employés of complainant, or any person or persons seeking employment with them; and also from interfering with the employés in going to and from their daily work.

A writ of subpœna was issued upon the bill of complaint and served on some of the defendants, others not being found.

On October 3, 1901, upon hearing then had, the temporary restraining order previously made was continued in force until the final hearing of the case, and upon final hearing on December 3, 1901, the preliminary injunction was made perpetual against all the defendants appearing or served with process.

On September 13, 1901, the complainant filed its verified petition in the cause, informing the court that various persons, among them some of the defendants to the bill, and also the appellant, Edward E. Bessette, were in contempt of the order of the court, and asked that a writ of judgment be issued against them and that they be held to answer for such contempt and that justice be done in the premises.

It was charged in the petition, among other things, as follows:

4 "That Edward Bessette (with others named) who are not defendants by name to said bill of complaint, but who had been and are conspiring and confederating with said defendants to do the things prohibited by said restraining order, had actual notice and knowledge of the text, scope, purpose and office of said restraining order at the time of the happening of the occurrences hereinafter set forth, and in which occurrences they participated.

"That said Edward Bessette (and others named) are now in contempt of this court, and have on numerous occasions, knowingly and deliberately, violated said restraining order, and in the manner hereinafter more particularly set forth.

"That almost daily since the issuance of said restraining order, acts of brutal violence have been committed by said respondents, or some of them, upon and against your petitioner's employés, and upon persons seeking service in your petitioner's factory; that said respondents and divers other persons, acting in concert with them or under their direction, many of whom are defendants to said bill of complaint, have been and are almost daily insulting and terrorizing your petitioner's employés by the use of violence, threats and

indecent language, most of which is so vile that it cannot be incorporated herein, and have, by a system of picketing your petitioner's factory, the highways and paths leading to the same, and the homes of your petitioner's employés, completely terrorized such employés and persons seeking employment in your petitioner's factory; that the respondents herein specifically named have openly boasted in the city of Hammond that they have read said restraining order, but that they do not intend to obey the same; that said respondents have brought to the city of Hammond a number of thugs and prize-fighters, who constitute what is known as the 'wrecking crew'; that said respondents are acting in concert with said 'wrecking crew' in the city of Hammond, and are daily pointing out to some member of said 'wrecking crew' one or more of your petitioner's employés, and are directing said 'wrecking crew,' or some member thereof, to brutally assault and beat the employé or employés so pointed out; that the city of Hammond is within a very short distance from the line dividing the State of Indiana from the State of Illinois, and that the members of said 'wrecking crew' (who are all strangers in and about the city of Hammond, and therefore cannot be easily identified) have assaulted and beaten, and are continuing to assault and beat, your petitioner's employés, under the orders and direction of said respondents, and immediately cross over the State line, or seek refuge in the woods surrounding your petitioner's factory; that it is impossible for your petitioner to set out in detail the daily violations of said restraining order, committed by the numerous defendants named in said bill of complaint, and their confederates by reason of the secrecy and swiftness with which they do their unlawful work and disappear across the State line, or in the neighboring woods; but your petitioner represents and informs the court that said respondents are openly acting as the leaders and advisers of the defendants so violating said restraining order, and are especially acting as the leaders and directors of said 'wrecking crew' in their brutal assaults upon your petitioner's employés, as hereinafter more specifically set forth.

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"That Harry Alting, one of the respondents, in combination with said other respondents, has formed a general conspiracy and plan of campaign by which he and his associates are endeavoring to destroy complainant's property and business, and to force complainant's employés to quit and abandon its service, and in pursuance of such conspiracy and plan of campaign, said Harry Alting, together with the respondents and others, are holding secret meetings in the city of Hammond, and have designated numerous other persons called 'committees' to visit the homes of petitioner's employés for the purpose of terrorizing such employés and the members of their families and thereby compel them to quit the petitioner's service; and that said Harry Alting, and the other respondents, have hired a number of thugs and prize-fighters of Chicago to go to Hammond to assault, beat and terrorize petitioner's employés, and ever since the issuance of the restraining order up to the present time a large number of such thugs and prize-fighters, known as the 'wrecking crew,' have been and are in the city of Hammond and

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acting directly under the control and command of said Harry Alting and his corespondents, or some of them, in the perpetration of brutalities.

"That Harry Alting, E. W. Tatum, and the other respondents, have organized and are conducting a system of picketing in and by which bands of men are designated and charged with the duty of watching each and every railway train entering the city of Hammond, for the purpose of meeting all persons coming to the city of Hammond seeking employment in petitioner's factory, and such band have met all, or nearly all, of such persons so seeking employment and have threatened them with bodily harm if they entered into petitioner's service or did work in his factory, and in a number of instances have carried such threats into execution; and said pickets are now patrolling the principal streets and private and public paths in the city of Hammond and stopping, interfering with, persons going to and coming from petitioner's factory; and that other bands of such pickets, acting under the orders and directions of said Alting, Tatum, and the other respondents, are picketing about petitioner's plant and factory, so that it is difficult for any
7 one entering or leaving said factory to do so without encountering such pickets and being stopped by them and frequently threatened and insulted and plied with vile and indecent epithets so loathsome that decency forbids their incorporation in the petition.

"That said 'wrecking crew' and some of the respondents herein and their confederates have from time to time designated certain bands of men to visit petitioner's employés at their homes, who deliberately entered such dwelling places and imperiously summoned such employés to appear before such bands in some saloon in the city of Hammond; and on or about September 2, 1901, D. R. Huntington, one of petitioner's employés, was so summoned in the night-time to appear at a saloon in the city of Hammond, and was then and there surrounded by Edward Bessette and others of the respondents, who informed said Huntington that they would give him his choice of either quitting his employment with petitioner, or having 'his head knocked off of his shoulders;' and said Huntington, being in mortal fear that such threats would be carried out, was coerced to quit, and did then and there, by reason of such threats, quit petitioner's service; that Edward Bessette and the others, acting in concert with some of the other respondents and a large number of other persons, held daily meetings; that bands or committees of men visited the homes of petitioner's employés and by like means as those in the case of Huntington, coerced and forced such employés to leave petitioner's service."

Upon the filing of the petition, the respondents therein, including Edward Bessette, were ordered to appear before the court and show cause why they and each of them should not be punished for contempt for violation of the restraining order, as aforesaid.
8 Bessette appeared to the order and filed his answer to the charges, and upon trial the court found him guilty of a contempt of court, as charged in the petition, and imposed a fine of two hundred and fifty dollars, payable to the United States, and the

costs of proceedings against him. From this order or judgment of the court Edward E. Bessette prayed an appeal to the circuit court of appeals, which was allowed by the court below.

The questions of law upon which this court desires the advice and instruction of the Supreme Court are:

First. Whether the circuit court of appeals has jurisdiction to review an order or judgment of a circuit court of the United States, finding a person guilty of contempt for violation of an order of that court and imposing a fine for the contempt.

Second. Whether the "act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes," approved March 3rd, 1891 (26 Stat. 826), authorizes a review by a circuit court of appeals of a judgment or order of a circuit court of the United States, finding a person, not a party to the suit, guilty of contempt for violation of an order of that court made in such suit, and imposing a fine for such contempt.

Third. Whether, if such review be sanctioned by law, a person so adjudged in contempt and fined therefor, who is not a party to the suit, can bring the matter to the circuit court of appeals by appeal.

9 Fourth. Whether, if such review be sanctioned by law, a person so adjudged in contempt and fined therefor, who is not a party to the suit, can bring the matter to the circuit court of appeals by writ of error.

These questions the court this day orders certified and submitted to the Supreme Court of the United States for its proper decision.

JAS. G. JENKINS.
P. S. GROSSCUP.
WM. H. SEAMAN.

Chicago, June 11th, 1902.

Filed Jun- 11, 1902.

EDWARD M. HOLLOWAY, *Clerk.*

10 [Endorsed:] United States circuit court of appeals for the seventh circuit. Edward E. Bessette *vs.* W. B. Conkey Company. Certificate.

Endorsed on cover: (Certificate.) File No. 18,690. U. S. C. C. of appeals, 7th circuit. Term No. 462. Edward E. Bessette *vs.* W. B. Conkey Company. Filed October 13th, 1902.